IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7633 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHUVA PLASTIC INDUSTRIES

Versus

REGIONAL PROVIDENT FUND COMMISSIONER

Appearance:

1. Special Civil Application No. 7633 of 2001

MR KV GADHIA for Petitioner No. 1

MR BHARAT T RAO for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 12/09/2001

ORAL JUDGEMENT

M/s. Mahuva Plastic Industries-petitioner has filed this petition for a writ of certiorari and/or mandamus or direction quashing and setting aside the orders dated 11.5.2001 passed by the Assistant Provident Fund Commissioner as well as the communication dated 13.6.2001 issued by the Enforcement Branch of the Regional Provident Fund Commissioner to the petitioner

under Section 7A of EPF & MP Act.

2. The facts giving rise to this petition are as under:

2.1 The petitioner company was engaged in the Plastic Industries and allotted PF Code No. GJ/3128A. Due to recession in the Industries, the establishment was closed since July, 1997 and not a single workman was engaged from July 1997 till date. In spite of the aforesaid fact, the Regional Provident Fund Commissioner had initiated inquiry and demanded provident fund dues from July 1997 to October 2000. The said inquiry was started under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as `the Act').

2.2 In view of the aforesaid notice the petitioner submitted before the Regional Provident Fund Commissioner records and challans in token of the dues paid for the period in question. The Provident Fund Commissioner thereafter adjudicated the matter and quantified the matter and directed the petitioner to pay Rs. 2,75,919/-. Though the respondent authority is a quasi-judicial authority, the respondent authority did not give any cogent and convincing reasons as to how he has adjudicated the amount in question. However, the respondent Commissioner has directed the petitioner to pay Rs. 2,75,919/-. The said inquiry was adjudicated without any basis and without any record in this behalf.

2.3 Being aggrieved and dissatisfied with the aforesaid order, the petitioner preferred Review Application under Section 7B of the Act. The said application has been filed in Form No. 9 and the said Review Application was filed on 29.5.2001.

3. The authority by its communication dated 13.6.2001 was pleased to reject the said Review Application only on the ground that the same was not with relevant proof of the allegations made.

4. Mr. Gadhia, learned advocate for the petitioner has contended before me that both orders are illegal and bad and therefore they are liable to be quashed and set aside. As regards the first order i.e. order dated 11.5.2001 passed by the Assistant Provident Fund Commissioner, he submitted that though the factory was closed since July, 1997 and not a single workman was engaged from July 1997 till October 2000, the respondent authority initiated inquiry and demanded provident fund

dues. The respondent authority has not given any reasons as to how he has fastened the liability of making payment of P.F. dues on the employer of the employees during the said period. Though one Maheboobbhai Adambhai Kalania, partner of the petitioner company appeared but from the record it appears that he did not produce any evidence on record and therefore the respondent authority has adjudicated the demand in this behalf.

5. Though in the review application the entire detail has been given, the respondent authority rejected the same only on the ground that the same has been submitted without relevant proof of the allegations made.

6. In my view, if I remand the matter to the Assistant Provident Fund Commissioner who will allow the petitioner to represent his case before him and allow the petitioner to produce necessary records, the same will be in the interest of justice. It appears that the inquiry has been initiated and adjudicated without any evidence on record and the review application has been disposed of without looking into the same. In view of the same, the petition is required to be allowed to that extent. However, with a view to see that no injustice is caused to the employees the petitioner is directed to deposit Rs. 60,000/- (Rupees sixty thousand) before the Regional Provident Fund Commissioner without prejudice to the rights and contentions of the parties in this behalf. The said amount will be adjusted when the Regional Provident Fund Commissioner finally adjudicate the matter and if there is any dues. The respondent authority will decide the matter as expeditiously as possible but not later than 10.11.2001. The petitioner will deposit Rs. 60,000/- within a period of one month.

7. In the result, the petition is allowed. No order as to costs.

(K.M. MEHTA, J)
(pkn)